EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
AUG 3 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Term, 1985

No. 85-200

JOHN and ELIZABETH O'KANE
(Petitioners)

vs.

FORD MOTOR COMPANY, INC.,
FORD TRACTOR OPERATIONS, and
SIMS CABS, INC.
(D.C. Civil No. 79-3643)

AND

FORD MOTOR COMPANY

vs.

JOHN and ELIZABETH O'KANE and
PENNSYLVANIA MANUFACTURERS ASSOCIATION INSURANCE CO.
and ROBERT J. MURPHY
(Petitioners)
(D.C. Civil No. 81-0138)

AND

JOHN and ELIZABETH O'KANE and ROBERT J. MURPHY
(Petitioners)

vs.

THE HONORABLE JOHN P. FULLAM, U.S. DISTRICT
JUDGE FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

(In the United States Court of Appeals
for the Third Circuit,
Nos. 84-1281, 84-1420, and 85-3067)

Philip H. Rush, Esquire
1420 Walnut Street, Suite 310
Philadelphia, PA 19120
Counsel for Petitioners, John and Elizabeth O'Kane

Robert J. Murphy, Esquire
Thomas W. Murphy, Esquire
MURPHY, MURPHY & MURPHY, P.C.
2341 Pennsylvania Avenue
Philadelphia, PA 19130
Counsel for Petitioner, Robert J. Murphy

42 1/2

QUESTIONS PRESENTED

Where the pleadings in these consolidated interpleader actions patently and conclusively establish that there is no minimal diversity of citizenship between the only disputing parties to a claim involving an alleged right to subrogation under the Pennsylvania Workmen's Compensation Act, which involves a purely local substantive issue in which there is a prior pending action before a state tribunal which will resolve the entire controversy, the court has usurped the jurisdiction over the subject matter and the parties beyond the legal and constitutional limits imposed under Sec. 2, Art. 3, of the Constitution of the United States; Sec. 1332 and 1335, 28 U.S.C. ...

TABLE OF CONTENTS

	Pg.
Questions Presented	i
Table of Authorities	iii
Citation to Opinions Below	2
Jurisdiction	3
Constitutional Provisions and Statutes Involved	4
Statement	5
Reasons for Allowance of the Writ . .	8
Conclusion	16
APPENDIX "A"--Court of Appeals Order Dated May 8, 1985, denying Petition for Rehearing En Banc	17
APPENDIX "B"--Court of Appeals Order Dated April 10, 1985, denying Petition for Writ of Prohibition/ Mandamus	19
APPENDIX "C"--Memorandum and Orders of the United States District Court per Judge Fullam	21

APPENDIX "D"--Order Dated November 7, 1980, Dismissing with Prejudice the Action at No. 79-3643 30

APPENDIX "E"--Order Entered May 21, 1985, Dismissing Ford Motor Company with Prejudice 32

APPENDIX "F"--Constitutional Provisions and Rules Involved 34

TABLE OF AUTHORITIES

	Pg.
Constitutional Provisions:	
Art. 3, Sec. 2, United States Constitution	1, 4, 8
Cases:	
Alabama Public Service Commission vs. Southern Railway Company, 341 U.S. 341 (1951)	13
Allegheny Airlines Inc. vs. Pennsylvania Public Utilities Commission, 319 F. Supp. 407, aff'd. 465 F. 2d 236, cert. den. 410 U.S. 943	13
Beal vs. Missouri Pacific Railroad Corporation, 312 U.S. 45	13
Ex parte Chetwood, 1897, 165 U.S. 442	4
Lentino vs. Fringe Employee Plans, Inc., 611 F. 2d 474, 478	15
Martin vs. Creasy, 360 U.S. 219 .	13
Orth vs. Transmit Investment Corporation, 132 F. 2d 938 (3rd Cir., 1942)	10
Plekowski vs. Ralston-Purina Company, 557 F. 2d, 1218, 1220 (5th Cir., 1977)	10
Roche vs. Evaporated Milk Association, 319 U.S. 21, 26 (1943).	9

Rosado vs. Weyman, 397 U.S. 405 . . 15

Schlagenhauf vs. Holder, 379 U.S. 104 (1964) 4

Sheldon vs. Elwood-Knitting Mills Inc., 718 F. 2d 603 . . . . . 8, 11

Spiller vs. Atchison, T. & S.F.RY. Company, 1920, 253 U.S. 117 . . . 4

State Farm Fire and Casualty Company vs. Tashire, 386 U.S. 523 (1967). 8, 9

Stewart Oil Company vs. Sohio Petroleum Company, 315 F. 2d 759 11

Thompson vs. Magnolia Petroleum Company, 309 U.S. 478 13

Toures vs. Walsh, 221 F. 2d 319, (2nd Cir., 1955), cert. den. 350 U.S. 836 10

Treines vs. Sunshine Mining Company, et al, 308 U.S. 66 (1939) 8

United Mine Workers vs. Fibbs, 383 U.S. 715 14

United States vs. Hamilton, 1795, 3 U.S. 17 4

United States vs. Helstotski, 576 F. 2d 511, 516 (3rd Cir., 1978), aff'd. 442 U.S. 500 (1978) 10

Statutes:

28 U.S.C.
Sec. 1332 . . . . . 1, 4, 9
1335 . . . . . 1, 4, 9

Rules of Civil Procedure:

F.R.C.P.
Rule 12(h)(3) 16
14 14

Petitioner respectfully prays that a writ of certiorari or alternatively prohibition issue to review the order of the United States Court of Appeals for the Third Circuit entered on May 8, 1985, denying petitioner's Petition for Rehearing En Banc to issue a Petition for Writ of Prohibit/Mandamus to the Honorable John P. Fullam, United States District Judge for the Easter District of Pennsylvania and for such other relief as justice warrants.

CITATION TO OPINIONS BELOW

The order of the United States Court of Appeals for the Third Circuit dated May 8, 1985, denying Petition for Rehearing En Banc by the United States Court of Appeals for the Third Circuit to grant Petition for Writ of Prohibition/Mandamus to the Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania and for such other

relief as justice warrants is attached hereto and marked as Appendix "A". The panel order by the United States Court of Appeals for the Third Circuit consisting of Judges Hunter and Garth, Circuit Judges, and Gerry, District Judge, denying the Petition for Writ of Prohibition/Mandamus to the Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania and for such other relief as justice warrants dated April 10, 1985, is attached hereto as Appendix "B". The memorandum and orders of the United States District Court per Judge Fullam assuming jurisdiction over the interpleader proceedings and consolidating the interpleader proceedings and directing Ford Motor Company deposit with the clerk of that court Seventy Thousand Dollars ($70,000.00); directing Ford pay the balance of the settlement; directing the O'Kanes and Pennsylvania Manufacturers Association Insurance Company (PMA) why it should not

be required to submit for the court's resolution its alleged subrogation claims under the Pennsylvania Workmen's Compensation Act are attached hereto and marked as Appendix "C". Attached hereto is a true and correct copy of the order entered November 7, 1980, dismissing with prejudice the action at No. 79-3643, which is marked Appendix "D". Attached hereto and marked as Appendix "E" is the order of the court entered May 21, 1985, dismissing Ford Motor Company with prejudice.

JURISDICTION

On May 8, 1985, the United States Court of Appeals for the Third Circuit denied the Petition for Rehearing En Banc to issue a Writ of Prohibition/Mandamus to the Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania and for such other relief

as justice warrants. The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1254(1), 1651(a), and the decisional law of this Court. Ex parte Chetwood, 1897, 165 U.S. 443; U.S. vs. Hamilton, 1795, 3 U.S. 17; Spiller vs. Atchison, T. & S.F.RY. Co., 1920, 253 U.S. 117; Schlagenhauf vs. Holder, 379 U.S. 104 (1964).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provision involved is the constitutional limits to the jurisdiction of the federal courst imposed under Sec. 2, Art. 3, of the United States Constitution, as well as Sec. 1332 and 1335, 28 U.S.C., demanding at least minimal diversity of citizenship between disputing parties and a claim in excess of Five Hundred Dollars ($500.00) over interpleader proceedings. These provisions are set forth verbatim in Appendix "F".

STATEMENT

The O'Kanes commenced an action against Ford Motor Company at No. 79-3643 in the United States District Court for the Eastern District of Pennsylvania as a result of personal injuries. As a result of a settlement agreement between the O'Kanes and Ford, O'Kanes' claims against Ford were dismissed with prejudice on November 7, 1980, for which settlement Ford agreed to pay the O'Kanes One Hundred Seventy-Five Thousand Dollars ($175,000.00). Subsequent to this dismissal, a dispute arose between the O'Kanes and Pennsylvania Manufacturers Association Insurance Company (hereinafter "PMA") as to the latter's alleged right to subrogation for benefits paid under the Workmen's Compensation Act of Pennsylvania from the settlement proceeds. On December 10, 1980, PMA filed a petition to secure its alleged right to subrogation

under the Pennsylvania Workmen's Compensation Act before the Pennsylvania administrative tribunal empowered to resolve the issue, to which the O'Kanes responded. On January 14, 1981, since Ford refused to pay the settlement proceeds to the O'Kanes, the O'Kanes filed a Motion to Enforce the Settlement. On January 14, 1981, Ford commenced a Complaint in Interpleader against the O'Kanes, their counsel, and PMA at No. 81-0138. On January 28, 1981, the O'Kanes filed a Motion to Dismiss Ford's Complaint in Interpleader for lack of Jurisdiction on principles of comity and failure to state a claim upon which relief could be granted. By order dated February 18, 1981, the District Court consolidated the civil actions, declared Ford's original Complaint as a counterclaim-third party complaint in interpleader; directed Ford serve PMA the third party complaint in interpleader; ordered Ford

to pay O'Kanes and their counsel One Hundred Five Thousand Dollars ($105,000.00) from the settlement proceeds; directed Ford to pay the balance in the amount of Seventy Thousand Dollars ($70,000.00) to the clerk of the court to protect PMA's alleged subrogation claim; directed O'Kanes and PMA to show cause why Ford should not be forever discharged; and directed PMA to show cause why it should not be required to submit the subrogation claims to the court. PMA filed an answer to the pleadings denying the court had jurisdiction over the claims for subrogation, which it was pursuing before the Pennsylvania administrative tribunal. By order entered May 21, 1985, while the matter was pending before the United States Court of Appeals, the District Court dismissed Ford Motor Company with prejudice.

REASONS FOR ALLOWANCE OF THE WRIT

The court's usurpation of jurisdiction patently exceeds the jurisdiction constitutionally reposed in the court under Sec. 2, Art. 3, of the United States Constitution, and its decision is in conflict with the applicable decisions of this Court. See State Farm Fire and Casualty Company vs. Tashire, 386 U.S. 523 (1967); Treines vs. Sunshine Mining Company, et al, 308 U.S. 66 (1939). The assumption of this jurisdiction is also clearly in conflict with the decision of the United States Court of Appeals for the Third Circuit in Sheldon vs. Elwood-Knitting Mills Inc., 718 F. 2d 603, and the assumption of jurisdiction in these protracted proceedings represents a departure from the usual and accepted course of judicial proceedings so as to call for an exercise of this Court's power of supervision.

In State Farm, supra, consistent with constitutional limitations, this Court extended the exercise of jurisdiction over interpleader proceedings to permit such jurisdiction where there is at least minimal diversity of citizenship between the disputing parties and a claim in excess of Five Hundred Dollars ($500.00) pursuant to Sec. 1332 and 1335, 28 U.S.C. It is admitted, and the pleadings patently disclose, that the only dispute is between the O'Kanes and PMA, who are both citizens of Pennsylvania. It is the traditional function of a writ of prohibition to confine an inferior court to the lawful exercise of its jurisdiction. Roche vs. Evaporated Milk Association, 319 U.S. 21, 26 (1943). The purpose of the writ is not to review each and every decision of a trial court even if on appeal after a final judgment there might be reversible error, however, the writ should be issued where there is a clear legal

error calling for relief that can be obtained through no other means. United States vs. Holstotski, 576 F. 2d 511, 516 (3rd Cir., 1978), aff'd. 442 U.S. 500 (1978); Plekowski vs. Ralston-Purina Company, 557 F. 2d 1218, 1220 (5th Cir., 1977). Where the pleadings patently disclose the lower court should not have exercised jurisdiction, interference is not only justified but necessary to compel the lower court to relinquish jurisdiction which it could not lawfully exercise in accordance with the constitutional mandate. Toures vs. Walsh, 221 F. 2d 319 (2nd Cir., 1955), cert. den. 350 U.S. 836; Orth vs. Transmit Investment Corporation, 132 F. 2d 938 (3rd Cir., 1942). This Court must exercise its supervisory power to supervise the administration of justice which is necessary to the orderly, even, and efficient administration of justice which petitioner has been denied in this protracted litigation. The district

court's reliance on Stewart Oil Company vs. Sohio Petroleum Company, 315 F. 2d 759, is entirely inapposite. The court concluded in the alternative that there was at least two (2) adverse claimants with genuinely adverse interests who were citizens of different states.

Not only do all parties admit the lack of minimal diversity of citizenship between the only disputing parties, PMA and the O'Kanes, which is also conclusively established on the face of the consolidated interpleader pleadings, but the court cannot acquire jurisdiction over the person of PMA, which is completely immune from joinder by any procedural mechanism in accordance with Pennsylvania law on the subject as applied and interpreted by the United States Court of Appeals for the Third Circuit in Sheldon, supra.

O'Kane, who is now over sixty-five (65) years of age, has been deprived of the

settlement proceeds for more than five (5) years without any end in sight and has been forced to defend the identical issues before the state administrative tribunal empowered to decide the entire controversy, which action was commenced by PMA itself prior to the consolidated interpleader proceedings pursuant to the district court's order dated February 18, 1981. Since the Court of Appeals for the Third Circuit denied the Petition for Prohibition/Mandamus petitioner has no other adequate remedy in any other court, and petitioner will indefinitely be deprived of the settlement money and will be required to defend the identical issues in two (2) separate forums when the present proceedings serve no purpose whatsoever.

It is equally apparent on the face of the pleadings that the court should have abstained from exercising jurisdiction on principles of comity, as well as failure

to state a claim upon which any relief could be granted. See, for example, Alabama Public Service Commission vs. Southern Railway Company, 341 U.S. 341 (1951); Thompson vs. Magnolia Petroleum Company, 309 U.S. 478; Beal vs. Missouri Pacific Railroad Corporation, 312 U.S. 45; Martin vs. Creasy, 360 U.S. 219; Allegheny Airlines Inc. vs. Pennsylvania Public Utilities Commission, 319 F. Supp. 407, aff'd. 465 F. 2d 236, cert. den. 410 U.S. 943. Consideration whether a federal court should decline jurisdiction include whether there is a prior pending action involving local issues over which a state court has assumed jurisdiction which will dispose of the controversy; prevention of inconsistent decisions between federal and state systems involving state substantive law; lack of any federal question; undesirable federal court interference in a unified state regulatory system for the formation of a state's policy; special expertise of

regulatory and administrative tribunals to formulate local state rights and liabilities. All of these reasons appear on the face of the pleadings in the present matter and manifestly dictate the district court should have declined jurisdiction in the alternative. Finally, it is equally apparent the court could not acquire jurisdiction over the consolidated interpleader proceedings either through ancillary or pending jurisdiction. Rule 14 on its face limits joinder to a third party defendant who is or may be liable on plaintiff's cause of action, and it is obvious that PMA could never be liable to Ford on O'Kane's cause of action disregarding for the moment the complete absence of Ford to seek a timely joinder under Rule 14. In United Mine Workers vs. Gibbs, 383 U.S. 715, the Court extended the power to decide local claims only where there were substantial federal questions presented and it was

expected all claims would be tried in one judicial proceedings deriving from a common nucleus of operative facts. The constitutional power to adjudicate pendant claims is determined by reference to the pleadings, not on the facts as they may eventually be disclosed or established. Lentino vs. Fringe Employee Plans Inc., 611 F. 2d 474, 478. The whole purpose of exercising pendant jurisdiction is grounded in the interest of the parties and the judicial system and having all claims between litigants resolved in a single suit. Rosado vs. Weyman, 397 U.S. 405. Examination of Ford's complaint in interpleader, which was converted sua sponte by the court into a clunterclaim-third party complaint in interpleader without alteration, discloses on its face that no federal question jurisdiction was asserted as well as the lack of minimal diversity of citizenship between the disputing parties, PMA and O'Kane. Thus, there is no pendant jurisdiction as disclosed by the pleadings. In

accordance with Rule 12(h)(3), whenever it appears the court lacks jurisdiction of the subject matter or the parties, the court shall dismiss the action.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this case is appropriate for the exercise of this Court's jurisdiction, and petitioner respectfully prays that this Petition for Writ of Certiorari be granted or the Court enter such orders as are warranted in the interest of justice.

Respectfully submitted,

BY: _____
Robert J. Murphy, Esq.

BY: _____
Thomas W. Murphy, Esq.

Counsel for Petitioner,
Robert J. Murphy

BY: _____
Philip H. Rush, Esq.

Counsel for Petitioners,
John and Elizabeth O'Kane

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 84-1281, 84-1420, 85-3067

O'KANE, JOHN AND ELIZABETH

vs.

FORD MOTOR COMPANY, INC.,
FORD TRACTOR OPERATIONS, and
SIMS CABS, INC.
(D.C. Civil No. 79-3643)

vs.

O'KANE, JOHN AND ELIZABETH, HUSBAND AND WIFE
and
PENNSYLVANIA MANUFACTURERS ASSOCIATION
INSURANCE COMPANY, and MURPHY, ROBERT J.
(D.C. Civil No. 81-0138)

Robert J. Murphy and John and Elizabeth O'Kane, Appellants

JOHN and ELIZABETH O'KANE and ROBERT J. MURPHY
Petitioners

vs.

THE HONORABLE JOHN P. FULLAM,
U.S. DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF PENNSYLVANIA
Respondent

SUR PETITION FOR REHEARING

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and MANSMANN, Circuit Judges

The petition for rehearing filed by APPELLANTS in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court:

_____
Judge

Dated: May 8, 1985

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 85-3067

JOHN and ELIZABETH
O'KANE and ROBERT
J. MURPHY, Petitioners

vs.

THE HONORABLE JOHN P.
FULLAM, U.S. DISTRICT
JUDGE FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

JOHN and ELIZABETH O'KANE

vs.

FORD MOTOR COMPANY, et al
(E.D. Civil No. 79-3643)

FORD MOTOR COMPANY

vs.

JOHN and ELIZABETH O'KANE, ET AL
(E.D. Civil No. 81-0138)

Present: HUNTER and GARTH, Circuit Judges,
and GERRY, District Judge.

1. Petition for Writ of Prohibition/Mandamus to the Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania and for such other relief as warranted.

2. Copy of the Court's order dated Feb. 20, 1985, referring petition to the merits panel to which the appeals at 84-1281 and 84-1420 have been assigned,

in the above-entitled case.

Respectfully,

Deputy Clerk 7-5019

enc.

The foregoing Motion is/~~are~~ DENIED.

By the Court,

_____
Judge

Dated: April 10, 1985

vy/cc Robert J. Murphy, Esq.
Jerrold P. Anders, Esq.
Marc Myers, Esq.
Mr. Michael E. Kunz, Clerk

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN and ELIZABETH O'KANE	:	CIVIL ACTION
vs.	:	
FOR MOTOR COMPANY, INC., et al	:	NO. 79-3643
FORD MOTOR COMPANY	:	CIVIL ACTION
vs.	:	
JOHN and ELIZABETH O'KANE, PENNSYLVANIA MANUFACTURERS INSURANCE COMPANY, and ROBERT J. MURPHY	:	NO. 81-0138

MEMORANDUM AND ORDER

FULLAM, J. FEBRUARY 18, 1981

In Civil Action No. 79-3643, plaintiffs sued for personal injuries sustained by the husband plaintiff. After the liability issues were submitted to a jury, but before the jury had reported its verdict, the case was settled for $175,000. The workers compensation carrier for O'Kane's employer,

Pennsylvania Manufacturers Association Insurance Company, has apparently asserted that it is entitled to subrogation to recover its workers compensation lien in the amount of approximately $66,000. There is a dispute between counsel for the O'Kanes and counsel for the defendant Ford Motor Company concerning plaintiff's obligation, under the settlement agreement, to protect the defendant Ford from the possible later assertion of a subrogation claim by PMA. Plaintiffs have filed a motion to enforce the settlement, seeking an order compelling Ford to pay the entire $175,000 to plaintiffs and their counsel.

In Civil Action No. 81-0138, Ford Motor Company has filed its Complaint in Interpleader, seeking to deposit the $175,000 settlement fund with the Court, or post bond in that amount, and thereupon to compel PMA to litigate its subrogation claim against the fund; in that manner,

Ford would be protected against any further claims by either the O'Kanes or PMA.

Both the O'Kanes and PMA are citizens of Pennsylvania. Ford, the alleged stakeholder, is not. While it is permissible to disregard the citizenship of a disinterested stakeholder, as a merely nominal party, see Treines vs. Sunshine Mining Co., 308 U.S. 66 (1939), the generally accepted view appears to be that the citizenship of the stakeholder may be relied upon to establish diversity, Stewart Oil Co. vs. Sohio Petroleum Co., 315 F. 2d 759, 762 (7th Cir.), cert. denied, 84 S. Ct. 71, 375 U.S. 828 (1963). Be that as it may, it seems clear that Ford's application for interpleader relief could have been asserted by way of counterclaim in the original personal injury action. Moreover, I believe it is preferable to address plaintiffs' Motion to Enforce the Settlement in conjunction with Ford's interpleader application. An order will

therefore be entered consolidating the two actions.

Viewing the consolidated record in its entirety, the following points emerge with clarity: (1) It is undisputed that Ford's total liability on account of the injuries sustained by Mr. O'Kane was, on November 1, 1980, by agreement of counsel, determined to be $175,000. (2) PMA's alleged subrogation claim does not exceed $70,000. (3) There is an unresolved dispute between the O'Kanes and PMA concerning the validity and enforceability of PMA's alleged compensation lien.

Since PMA has not yet been made a party in these proceedings, I express no view concerning the proper forum for ultimate resolution of the merits of PMA's alleged subrogation claim. In the exercise of this Court's ancillary jurisdiction, however, I have concluded that it would be appropriate to (a) retain control over the disputed

portion of the settlement fund pending resolution of the controversy over the workers compensation lien; (b) restrict PMA to the retained fund for satisfaction of any subrogation claim it may eventually succeed in establishing; and (c) require that the undisputed balance of the settlement fund be paid to plaintiffs and their counsel. An order to that effect will therefore be entered.

ENTERED: 2-19-81

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FORD MOTOR COMPANY	:	CIVIL ACTION
	:	
vs.	:	
	:	
JOHN and ELIZABETH O'KANE, PENNSYLVANIA MANUFACTURERS INSURANCE COMPANY and ROBERT J. MURPHY	:	NO. 81-0138

O R D E R

AND NOW, this 18th day of February, 1981, it is ORDERED that this action is consolidated with Civil Action No. 79-3643; the "Complaint" in interpleader shall be deemed to constitute a counterclaim/third-party claim for interpleader.

John P. Fullam, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN and ELIZABETH O'KANE	:	CIVIL ACTION
vs.	:	
FORD MOTOR COMPANY, INC., et al	:	NO. 79-3643
FORD MOTOR COMPANY	:	CIVIL ACTION
vs.	:	
JOHN and ELIZABETH O'KANE, PENNSYLVANIA MANUFACTURERS INSURANCE COMPANY and ROBERT J. MURPHY	:	NO. 81-0138

O R D E R

AND NOW, this 18th day of February, 1981, upon consideration of the motion of plaintiffs John and Elizabeth C'Kane to enforce a settlement agreement, and upon preliminary consideration of Ford Motor Company's Counterclaim for interpleader, is it ORDERED:

1. The defendant Ford Motor Company shall deposit into the registry of this Court,

the sum of Seventy-Thousand Dollars ($70.000).

2. The defendant Ford Motor Company shall promptly pay to plaintiffs and their counsel the balance of the agreed-upon settlement, namely, the sum of One Hundred Five Thousand Dollars ($105,000).

3. The defendant Ford Motor Company shall cause a copy of its Counterclaim in Interpleader (originally designated a Complaint in the consolidated action), together with a copy of this Order, to be served upon Pennsylvania Manufacturers Association Insurance Company.

4. Within thirty (30) days after such service, plaintiffs John and Elizabeth O'Kane, and the said Pennsylvania Manufacturers Association Insurance Company shall show cause, if any they may have, why the defendant Ford Motor Company should not be forever discharged from any and all claims or demands by either the said John and Elizabeth O'Kane or the said Pennsylvania Manufacturers Association Insurance Company, stemming from the accident giving rise to

this action; and why Pennsylvania Manufacturers Insurance Company should not be required to submit to this Court for resolution its alleged subrogation claims stemming from that accident.

John P. Fullam, J.

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN and ELIZABETH O'KANE	:	CIVIL ACTION
vs.	:	FILED NOV. 7, 1980
FORD MOTOR COMPANY, INC. and FORD TRACTOR OPERATIONS	:	NO. 79-3643

O R D E R

AND NOW, to wit, this 7th day of November, 1980, it having been reported that the issues between the parties in the above action have been settled and upon Order of the Court pursuant to the provisions of Rule 23(b) of the Local Rules of Civil Procedure of this Court (eefective January 1, 1970), it is

ORDERED that the above action is DISMISSED with prejudice, pursuant to agreement of counsel without costs except

as provided by Local Rule 42(d).

MICHAEL E. KUNZ, Clerk

BY: _____
Deputy Clerk

ENTERED: 11-7-80

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

O'KANE	:	CIVIL ACTION
vs.	:	
FORD MOTOR COMPANY, et al	:	NO. 79-3643
FORD MOTOR COMPANY	:	
vs.	:	
O'KANE, et al	:	NO. 81-0138
JOHN and ELIZABETH O'KANE and ROBERT J. MURPHY	:	FILED MAY 20, 1985
vs.	:	
THE HONORABLE JOHN P. FULLAM, U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA	:	NO. 85-3067

O R D E R

AND NOW, TO WIT, this 16th day of May, 1985, it is hereby ordered and decreed that Ford Motor Company is dismissed from all of the above captioned cases. Said dismissal

being with prejudice to all parties.

BY THE COURT:

_____
John P. Fullam, J.

ENTERED: 5-21-85

CLERK OF COURT

APPENDIX "F"

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Art. 3:

Section 2, Clause 1. Jurisdiction of Courts The judicial Power shall extend to all Cases, in Law and Equity, . . .; --between Citizens of different States; . . .

28 U.S.C.

§1332 Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controvery exceeds the sum or value of $10,000, exclusive of interest and costs, and is between--

(1) citizens of different states . . .

§1335. Interpleader.

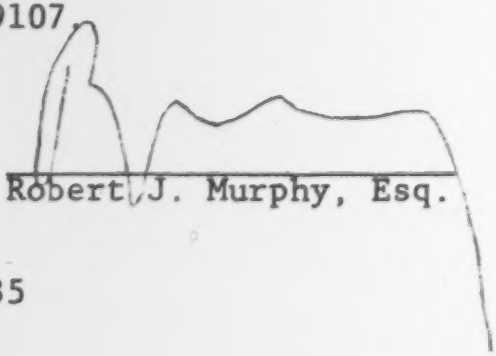
(a) The district courts shall have original jurisdiction of any civil action

of interpleader or in the nature of interpleader filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, . . . if

(1) Two or more adverse claimants, of diverse citizenship as defined in Sec. 1332 of this title, are claiming or may claim to be entitled to such money or property, . . .

CERTIFICATION OF SERVICE

This will certify that the original and thirty-nine (39) copies of Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit have this day been sent via first class mail for filing to the Clerk of the United States Supreme Court in Washington, D.C. and that a true and correct copy of said Petition for Writ of Certiorari has this day been sent via first class mail to Marc Myers, 925 Chestnut Street, Philadelphia, PA 19107.



Robert J. Murphy, Esq.

Date: August 2, 1985